

## TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

### FEDERAL RULES OF APPELLATE PROCEDURE

#### Rule 3. Appeal as of Right — How Taken

##### (a) Filing the Notice of Appeal.

- (1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).
- (2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.
- (3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.
- (4) An appeal by permission under 28 U.S.C. § 1292(b) ~~or an appeal in a bankruptcy case~~ may be taken only in the manner prescribed by Rules 5 ~~and 6~~, respectively.

##### (b) Joint or Consolidated Appeals.

- (1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.
- (2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

##### (c) Contents of the Notice of Appeal.

- (1) The notice of appeal must:
  - (A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";
  - (B) designate the judgment, order, or part thereof being appealed; and
  - (C) name the court to which the appeal is taken.

### FEDERAL CIRCUIT RULE

#### Rule 3. Appeal as of Right - How Taken

##### (a) Appeal Information Sheet; Opinion; Certified Copy of Docket Entries.

When a notice of appeal is filed, the trial court clerk must promptly send to this court's clerk the appeal information sheet prescribed by this court. The trial court clerk must attach a copy of the opinion, if any, that accompanied the judgment or order being appealed. The trial court clerk must certify the copy of the docket entries and send it with the notice of appeal and the appeal information sheet.

##### (b) Petition for Certification of Judgment of the High Court of the Trust Territory of the Pacific Islands.

A petition for certification of a judgment of the High Court of the Trust Territory of the Pacific Islands under the Compact of Free Association: Federated States of Micronesia, Republic of Marshall Islands, Title II, Title One, Article VII, §174(c), and the Compact of Free Association: Palau, Title II, Title One, Article VII, § 174(c), in 48 U.S.C. § 1901 note and § 1931 note, must be filed with this court's clerk, but otherwise is deemed to be an appeal from the judgment of a district court for purposes of these rules.

- (2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.
- (3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.
- (4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.
- (5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

**(d) Serving the Notice of Appeal.**

- (1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. ~~When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant.~~ The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.
- (2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.
- (3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

**(e) Payment of Fees.** Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

## ***Practice Notes***

**Failure to File a Notice of Appeal.** Only a party that has filed a notice of appeal may attack all or any part of the trial court judgment. Any other party in the trial court not filing a notice of appeal may participate in the appeal as an appellee but may not seek to overturn or modify the judgment.

**Fees.** The fee schedule is set forth in Federal Circuit Rule 52. See also 28 U.S.C. sec. 1913, note 1 [Judicial Conference Schedule of Fees].

**Filing and Docketing an Appeal.** An appeal is docketed when the notice of appeal is received in, or, when permitted, mailed to the trial court. An appeal sent to this court by the trial court clerk is docketed when it is assigned a docket number, a docket card for the appeal is made available to the public, and the names of the parties to the appeal are recorded in the party index that is available to the public.

**Filing and Docketing Appeals Under 15 U.S.C. sec. 3416(c) and Petitions Under 42 U.S.C. sec. 300aa-12(f).** Appeals under 15 U.S.C. sec. 3416(c) from the district courts and petitions under 42 U.S.C. sec. 300aa-12(f) from the Court of Federal Claims are filed in this court, unlike other appeals from those courts in which the notice of appeal is filed with the clerks of those courts. However, once these appeals or petitions are filed in this court, they are forwarded to the clerks of those courts with instructions to comply with Federal Rule of Appellate Procedure 3(d).

**Appeal Information Sheet.** The form for the appeal information sheet is at Appendix of Federal Circuit Forms, Form 4.

### **Rule 3.1. Appeal from a Judgment of a Magistrate Judge in a Civil Case**

[Abrogated]

### **Rule 4. Appeal as of Right — When Taken**

#### **(a) Appeal in a Civil Case.**

##### **(1) Time for Filing a Notice of Appeal.**

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered.

(2) **Filing Before Entry of Judgment.** A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

### **Rule 4. Appeal as of Right - When Taken**

Untimely Notice of Appeal. The clerk may return a notice of appeal that is untimely on its face.